

REMARKS

Applicant is in receipt of the Office Action mailed February 23, 2005. Claims 1-66 are pending. Claims 1, 45-48, 50-52, 65, and 66 were rejected. Claims 2-44, 49, and 53-64 were objected as being dependent upon a rejected base claims but would be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims. Applicant thanks the Examiner for consideration of these claims. Reconsideration of the present case is earnestly requested in light of the following remarks.

Claim Objections

Claim 50 was objected to due to “a typographical error” at line 15, where the Examiner asserts that “cobr” should be “color”. However, Applicant has reviewed the claims as originally submitted, and no such spelling of “color” (cobr) has been found. Applicant respectfully submits that the Examiner’s copy likely has an anomalous printing error that printed the “l” too close to the “o”, appearing to form a “b”. Applicant respectfully submits that no change to claim 50 is necessary, and respectfully requests removal of the objection to claim 50.

Allowable Subject Matter

Claims 2-44, 49, and 53-64 were objected to as being dependent upon a rejected base claim, but the Examiner indicated that these claims would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant appreciates the allowed subject matter, but believes the claims to be allowable as currently written, as explained in detail below.

§102 Rejections

Claims 1, 45, 47, 48, 50, 51, and 65 were rejected under 35 U.S.C. 102(e) as being anticipated by National Instruments (“IMAQ Vision Concepts Manual”, October 2000, pages 14-18 through 14-25) (hereinafter “the IVCN reference”). This rejection is respectfully traversed.

Applicant notes that 102(e) is only applicable if “the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent...”, and further notes that the IVCN reference is neither a published application, nor a granted patent. Thus, Applicant submits that the 102(e) rejection is improper, and respectfully requested removal of the rejection.

Additionally, Applicant further submits that the IVCN reference is also not prior art under 102(a) or 102(b). For example, regarding 102(a), Applicant submits that the cited IVCN passages are actually a description of Applicant’s invention, and so are not a description of the invention “by another”. Applicant has included herewith a 37 CFR 1.132 Declaration accordingly. Regarding 102(b), Applicant notes that the IVCN reference was first made available in November of 2000, and thus does not predate the present application’s filing date by more than one year, and so the IVCN reference is not properly prior art under 102(b).

Thus, Applicant respectfully submits that the cited art is not in fact proper prior art with respect to the present application. Accordingly, Applicant respectfully submits that claims 1, 45, 47, 50, and 51 and any claims respectively dependent therefrom are patentably distinct, non-obvious, and allowable.

Removal of the §102 rejection of claims 1, 45, 47, 48, 50, 51, and 65 is respectfully requested.

§103 Rejections

Claims 46 and 66 were rejected under 35 U.S.C. 103(a) as being unpatentable over the IVCN reference in view of Bedrosian et al. (U.S. Patent No. 5,495,537, “Bedrosian”). This rejection is respectfully traversed.

As discussed above, Applicant respectfully submits that the filing date of the instant Application excludes the IVCN reference, which was made available no earlier

than November, 2000, as prior art under 102, and thus Applicant submits that the IVCN reference is also not available as prior art under 103(a). Thus, the Examiner's attempted combination of IVCN and Bedrosian is improper. Accordingly, Applicant respectfully submits that claims 46 and 66 are patentably distinct and non-obvious over the cited art, and are thus allowable for at least the reasons provided above.

Removal of the §103 rejection of claim 46 and 66 is respectfully requested.

Applicant also asserts that numerous ones of the dependent claims recite further distinctions over the cited art. However, since the independent claims have been shown to be patentably distinct, a further discussion of the dependent claims is not necessary at this time.

CONCLUSION

Applicant submits the application is in condition for allowance, and an early notice to that effect is requested.

If any extensions of time (under 37 C.F.R. § 1.136) are necessary to prevent the above referenced application(s) from becoming abandoned, Applicant(s) hereby petition for such extensions. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert & Goetzel PC Deposit Account No. 50-1505/5150-63900/JCH.

Also enclosed herewith are the following items:

- ☒ Return Receipt Postcard
- ☒ 37 CFR 1.132 Declaration

Respectfully submitted,



Jeffrey C. Hood
Reg. No. 35,198
ATTORNEY FOR APPLICANT(S)

Meyertons, Hood, Kivlin, Kowert & Goetzel PC
P.O. Box 398
Austin, TX 78767-0398
Phone: (512) 853-8800
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